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of father-right, but only prepares the way for it, is demonstrably illogical. The fact that *after* wife-purchase has become usual, wife-capture within the tribe does not establish paternal authority over the children, is perfectly intelligible: at this stage of social development wife-capture becomes a distinctly wrongful act which cannot create rights; it becomes wife-stealing. But this fact does not sustain the contention that wife-capture could not establish marital and paternal rights at a time when the mode of appropriation was regarded as right and honorable. Here as elsewhere the author's argument is incomplete because he has postponed, for the present, all discussion of endogamy and exogamy.

The book goes far to clarify the discussion of a number of very complicated and difficult questions, and its further instalments will be awaited with interest.

MUNROE SMITH.

Alt-Arisches Jus Civile. Erste Abtheilung. Von Dr. B. W. LEIST, Professor an der Universität zu Jena. Jena, Gustav Fischer, 1892. — 8vo, 531 pp.

Professor Leist has resumed, with somewhat tedious restatements and repetitions, the line of investigation pursued in his *Gräco-Italische Rechtsgeschichte* (1884) and his *Alt-Arisches Jus Gentium* (1889). His attempt is to reconstruct the common Aryan beginnings of all Indo-Germanic legal systems by a comparison of Hindu, Greek and Roman institutions, with occasional excursions into Armenian, Persian, Celtic and German usages and laws. The common Aryan basis, as he shows, is rather religious and moral than legal: it is the divinely ordained system which the Hindus called *dharma*, the Greeks *themis*, and the Latins *fas*. It is this common divine law which Professor Leist rather oddly calls *jus gentium*. The term *jus civile*, on the other hand, he uses in a strictly Roman sense, to designate the local systems of law which were worked out in the ancient city-states of Greece and Italy. *Aryan Civil Law* is therefore, according to his own theory, a misnomer, for the Aryans never had a common civil law. All that they had in common was a religious law, in which, however, were imbedded many germs of the various civil laws which were developed independently centuries after their separation into distinct nationalities.

The present work, which will embrace two more volumes, is primarily an attempt to reconstruct the Roman *fas*, of which our knowledge is unfortunately very scanty, by the aid of *dharma* and

themis, and to show the Aryan origin of much of the Roman *jus civile*. The present volume deals mainly with the first of these problems, and therefore contains almost no civil law, Roman or Aryan. The later volumes will treat respectively of the "development of the Roman *civilis ratio*," and of the Roman scheme of legal acts and legal sanctions. In them, the author expects to derive much assistance from the older city-laws of Greece, and particularly from the newly discovered law of Gortyn.

In this work, as in its predecessors, Professor Leist sharply distinguishes his line of investigation — which, as he insists, is purely legal-historical — from the broader field of research which is commonly called comparative legal science. He is not concerned with the evolution of human customs and laws as a branch of ethnological or sociological science, but with the development of Aryan law as a matter of institutional history. His anxiety not to be included among the comparative legal scientists is due to distrust of their methods and disbelief in the correctness of their conclusions. He denies, for example, that there is any trace in Aryan law of primitive mother-right, and he obviously disbelieves in its existence at any period in any decently moral community. On the other hand, he does not find that agnation is the original Aryan system of kinship, but holds that relationship was traced through both lines, the male and the female. He therefore asserts, for Aryan law at least, the priority of that system which most students of comparative legal history regard as the most modern. On their part the adherents of the comparative school assert that much of Professor Leist's work is vitiated by the erroneous assumption that the *dharma* of the Sūtras is primitive Aryan law. They maintain that the social relations of India, at the period of the Sūtras, had reached a comparatively advanced stage of development, and that the Sūtras themselves represent centuries of sacerdotal construction and interpretation which practically amount to legislation.

In the forthcoming volumes of *Aryan Civil Law* Professor Leist will return to the field in which he did his earliest and best work, and in which he is recognized as an authority — the field of Roman legal history. That much light may be thrown upon its dark places by a comparison with other systems, and in particular by the analogies of Greek civil law, will not be disputed — least of all by his dearest enemies, the comparative legal scientists.

M. S.